

Title 23, Article 1, Chapter 1, Article 3, New Section 13.1

§ 13.1. Conduct and Order of Evidentiary Hearing Proceedings.

(a) It is the purpose of this section to incorporate and implement the informal hearing procedures and Administrative Adjudication Bill of Rights in Chapter 4.5 of the Administrative Procedure Act (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, which require notice and an opportunity to be heard, including the opportunity to present and rebut evidence. Chapter 5 of the Administrative Procedure Act (commencing with section 11500) does not apply to evidentiary hearings before the board.

(b) The board's evidentiary hearings on permit applications shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

(c) The board's evidentiary hearing on a permit application shall be held in open session. Unless the President or appointed hearing officer directs otherwise, the hearing shall proceed in the following order:

(1) The Executive Officer or his/her designee shall make a presentation to the board identifying the application, describing the project, and summarizing the staff recommendation, including the proposed findings, proposed conditions, and written correspondence received prior to the hearing.

(2) The public testimony portion of the public hearing shall proceed in the following order:

- | (i) Persons or their representatives desiring to state their views on the application shall have  
| ~~the opportunity to do so as follows:~~ Deleted: \_  
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- | ~~(A) The applicant;~~ Deleted: \_  
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- | ~~(B) Other persons supporting the application;~~ Deleted: \_  
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- | ~~(C) Persons opposing the application;~~ Deleted: \_  
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- | ~~(D) Other persons.~~ Deleted: \_  
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- | ~~(ii) The President or appointed hearing officer may allow rebuttal testimony by the applicant.~~ Deleted: \_  
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- | ~~(iii) The Executive Officer or his/her designee may respond to and comment, as appropriate,~~ Deleted: \_

on the testimony presented by any previous speaker.

(3) The President or appointed hearing officer may close the public testimony portion of the hearing when a reasonable opportunity to present all questions and points of view has been allowed.

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(4) Board members may ask questions at any time following any person's presentation.

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(5) At the conclusion of the public testimony portion of the public hearing, the Executive Officer or his/her designee may propose to change the staff recommendation or the board may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the Executive Officer or his/her designee shall have an opportunity to comment on any proposed change.

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(6) The ~~board~~ shall vote on a permit application in accordance with Water Code section 8560.

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(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The President or appointed hearing officer may take official notice of such facts as may be judicially noticed by the courts of this state. Unduly repetitious or irrelevant evidence shall be excluded upon order by the President or appointed hearing officer.

(e) The President or appointed hearing officer may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The President or appointed hearing officer may require individuals to consolidate their comments to avoid repetition.

(f) In order for audio, visual, or audio-visual materials to be considered by the board, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(g) The speaker must submit all materials presented at the hearing to the Executive Officer or his/her designee for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or other large-sized materials may satisfy this requirement by:  
(1) submitting accurate reproductions or photographs of the models or other large materials and  
(2) agreeing in writing to make such materials available to the board if necessary for any administrative or judicial proceeding.

(h) All decisions of the board relating to permit applications shall be accompanied by written conclusions setting forth the factual and legal basis of the decision based upon the record. The written conclusions shall include all elements identified in Water Code section 8610.5(c)(1)-(4).

▲ (1) For purposes of this section, a resolution adopted by the board at the hearing shall be deemed to satisfy the requirement for written conclusions, including any modifications made to the resolution at the hearing.

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▲ (2) In addition, unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report, including any modifications made to the staff report at the hearing.

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(i) If the board action is substantially different than that recommended in the staff report and/or the resolution, the board may direct staff to return at a subsequent board meeting with a revised resolution and/or proposed revised written conclusions that reflect the action of the board. Revised written conclusions may be placed on the consent calendar and do not re-open the hearing. Public comment is restricted to whether the revised written conclusions reflect the action of the board. Any proposed written conclusions shall only be effective if concurred in by at least four members of the board. Board members who were not present for the original vote may only vote on the revised written conclusions if they have familiarized themselves with the record of proceedings. If the board does not accept the revised resolution or proposed revised written conclusions submitted by the Executive Officer, the board can either make such changes as it determines are appropriate and adopt the findings at that meeting or direct the Executive Officer to prepare further proposed written conclusions and submit them to the board at the next meeting. The board's decision is deemed final at the time of the initial vote on the application, not the time that the revised written conclusions are adopted.

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Deleted: Only those board members who voted on the initial application decision may vote on whether or not to adopt the proposed written conclusions.

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(j) If the applicant requests language assistance prior to the hearing, the board shall provide language assistance in accordance with Article 8 (commencing with Section 11435.05) of the Administrative Procedure Act. The President or appointed hearing officer may direct the applicant to pay for the cost of the interpreter. The determination whether to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the applicant in need of the interpreter to pay. If the request for an interpreter is not made within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made, the hearing may be continued to a subsequent meeting.

(k) The board may vote to continue all or part of the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed in accordance with Section 13 of these regulations. A continuance of part of a hearing does not reopen the entire hearing.

Note: Authority cited: Section 8571, Water Code and Section 11400.20, Government Code.  
Reference: Section 11425.10, Government Code; and Section 8610.5, Water Code.